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TOWNSHIP OF TORONTO

PLANNING BOARD

1958

L. S. W.

January 12, 1959

The Chairman,
The Township of Toronto Planning Board.

Dear Mr. Christie:

1958 was, in many ways, a good year for the Board, not only because solutions to a number of chronic problems were found, but because the Public Relations of the Board improved greatly and the programme of "citizen-participation" enjoyed a fair measure of success. The latter item necessitated a great deal of 'overtime' by the Staff, but the results, it is hoped, justified the effort expended.

The items included in this report are by no means comprehensive, but it is hoped that the whole will give some idea of the Board's activities during the year. Throughout 1958 the Board's staff enjoyed the most friendly co-operation with other township departments and with other levels of government. The number of enquiries received daily has increased over the year, as has the variety of subjects covered. Such work, as well as that occasioned by the Board's statutory obligations, for instance Official Plan Amendments and Subdivision Control, has kept both the technical and clerical staff of the Board occupied. However, basic studies started in 1957 have been continued and others started in 1958.

Development in the township has not been spectacular in the last twelve months, though the population of the planning area has grown by about 4,500. Industrial building has continued to improve the Township's "Assessment ratio" and appears to have justified the prognostications of the Board which helped Council formulate a residential subdivision policy for 1958. As a result of the "release" of 1000 lots in 1958, the Board has had to prepare a number of community studies which will all be useful in future years.

1959 should see a number of subdivisions, on which the Board has worked in 1958, built and probably work on others finished. However, it is expected that the major task of the year will be the complete and comprehensive revision of the Official Plan. This will not only bring it up to date, by taking account of major external developments during the last five years, over which the Township has had no control but which have influenced the township, but will widen its scope, making it a more useful and efficient guide for the development of the area. No doubt other tasks will fall to the Board; these it is hoped can be accepted and accomplished in the cheerful and energetic way that the work load of 1958 was completed.

Yours very truly,

M.J. Bacon,
Director of Planning and Secretary-Treasurer

Council Members

Mrs. M. Fix
R. Speck
V. Vignale
H. Speck
C. Murray
R. McMillan
T. Sills

Planning Board Members

W. Christie
W. McCormack
J. Pengilley
G. Molnar
Col. J. Perry
H. Langford
V. Vignale
T. Sills
Mrs. M. Fix

Committee of Adjustment

J. B. Milner
J. Smith
J. Crowe

TOWNSHIP OF TORONTO PLANNING BOARD AND COMMITTEE OF ADJUSTMENT STAFF

M. J. Bacon, B.Arch., M.C.D., A.R.I.B.A., A.M.T.P.I., A.M.T.P.I.C., Assoc. A.I.P.
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THE OFFICIAL PLAN

1.

During the past year some 41 applications to amend the Official Plan were received by the Municipality and dealt with as follows:

Referred to Committee of Adjustment	1
Approved	8
Refused	17
Deferred	8
Pending decision at end of year	<u>6</u>
TOTAL	40

Whilst only 8 of these applications were approved, 14 amendments to the Official Plan of the Township of Toronto Planning Area were prepared by the Technical Staff, and recommended by the Planning Board, comprising Amendment Submission Numbers 65-78. Of these only one has not yet been approved by Council, i.e. Amendment No. 75, involving the North Dixie Area, and recommending a major land use change of some 1950 acres of land presently designated "Residential" to "industrial." The 14 amendments recommended changes in designation to some 38 parcels of land, of which only 3 were not approved, for one reason or another, by the Minister of Planning and Development or the Ontario Municipal Board.

Possibly the most important amendment submitted in 1958 was #66, which dealt with 15 major land use changes in the Lakeview Area and was a culmination of the Lakeview Study. However, the most important amendment approved by the Minister during 1958 was a 1957 submission - Amendment No. 64 - which dealt with some 42 land use changes, concentrated in an area around the Cooksville nucleus, and consequent upon the Cooksville Study. By his general approval to this amendment, with only slight modifications to 4 of the 42 items, the Minister acknowledged the thoroughness and basic soundness of the Cooksville Study which was recommended by and adopted by the Planning Board and Council in 1957.

For the remainder of the amendments, there were few of any real consequence, emphasizing again the "over-flexibility" of the present Official Plan. The number of amendments submitted and the changes of land use involved, during 1958 only strengthens the premise that the present Official Plan cannot be said to be performing its proper function, and at the present time is being treated largely as a vehicle to enable implementing Zoning By-Laws to be passed. The Official Plan should do far more than this, for, whilst the value of the Zoning By-Law is recognized, it should be only one of the factors involved in the efficient working of the Official Plan.

It would appear then, that the only solution to these and many other problems would be the preparation of a Revised Official Plan - a major task which would take some time. A Revised Plan could be the answer to the majority of the day-to-day planning problems upon which the staff of the Board become engaged without really getting to grips with the overall long term problems facing the Township and could provide the stability of land use which is missing under the current Official Plan. Such a Revised Plan would ensure a proper basis upon which the Township of Toronto could plan ahead for the next twenty years.

* * * * *



REQUESTS FOR AMENDMENT.
TO THE OFFICIAL PLAN.



- REFERRED TO C OFA.
- APPROVED
- ▼ REFUSED
- + DEFERRED
- PENDING

SUBDIVISIONS

The 1957 report did not include a section on Subdivisions since there had been, during the year, a virtual freeze on residential development in the Township; 1958 however, saw a change in policy. Early in the year Council requested the Planning Board to provide it with the facts on which to base a programme and policy for residential construction. This task was accomplished by the Board, with the assistance and co-operation of other township departments, and resulted in resolution #373, which was passed by Council at its meeting on June 23rd, 1958. This "released" approximately 1000 lots in numerous subdivisions in three areas (1) The South-East Sewer Area (2) The South-West Sewer Area (3) An area in the Clarkson-Lorne Park district which, it was felt, could be developed on a "septic tank basis." The Resolution also set out in appendices the basis on which subdivisions would be permitted.

A great deal of detailed consideration was given to subdivisions released and it is expected that many will be physically built during 1959. Meanwhile work continues in preparation for further development in the future. This includes community studies to determine the facilities, in terms of the density of residential development, shopping areas, collector and other roads, schools, parks, churches, sewerage, gas, water, electricity, telephone, postal services, garbage collection, needed in areas which may be built up in the relatively near future. It is hoped that, as a result of such planning work, new areas will perhaps enjoy a higher standard of amenities than are now available in many districts.

SUBDIVISION PROCESSING

In the report on the Board's activities during 1957 one section dealt with the procedure followed when applications for amendments to the Official Plan are received by the Township. In this section the procedure followed in the case of applications for approval of a plan of subdivision will be outlined. It should be noted that the outline given here is general and is not intended to be a description of the steps that must legally, under the provisions of Section 26 of The Planning Act, 1955, be taken by any intending developer. It does, however, set out the steps followed in most cases within the Municipality, and refers to steps taken by other levels of government so as to set the Municipality's part in proper perspective.

The subdivider, (generally with the help of a consultant), will prepare a plan in accordance with Section 26 of The Planning Act, 1955, and submit it to the Department of Planning and Development. (Community Planning Branch, 454 University Ave. Toronto 2). The plan will then be given a "T" number for reference purposes by that Department and be submitted to the Township of Toronto Planning Board.

The Township requires ten copies of the draft plan and two copies of a drainage report undertaken by a professional engineer. Since the Department of Planning and Development does not send the required number of copies to the Township, the Planning Board staff, will, on receipt of the proposed plan from the Department, request from the Subdivider a sufficient number of additional copies of the draft plan to make up the total number required by the Township. No consideration by Township departments, other than the Planning Board, can be given until this material is available.

In addition to the general information requested by the Planning Act, 1955, the Township specifically requires that the draft plan indicates the topographic features of the area, by means of contours at 2 foot intervals and spot elevations, on a 100-foot grid with extra spot levels for high or low points, all being carried from the nearest Township geodetic bench mark. If a geodetic bench mark is not available in the area of the subdivision, other bench marks must be approved by the Township Engineer. The datum must be clearly noted on the plan.

When this material has been received in the office of the Planning Board, the Technical Staff of the Board prepares a staff report. If this indicates that no major revisions are needed, the plan is sent to all relevant departments within the Township. As soon as they have had an opportunity to prepare a report on the plan, a meeting of the Department Heads is called to discuss the plan and 'iron out' any problems arising from it. After this meeting written reports from Township Departments are sent to the Planning Board office and a composite report prepared for the Board's consideration. The Planning Board then forwards its recommendation to Council and if Council adopts the Board's suggestions, it, in turn, will recommend that the plan be forwarded to the Metropolitan Toronto Planning Board.

(Before the Municipality's recommendation can be sent to the Metropolitan Toronto Planning Board, the questionnaire "T" forms, which accompany the plan when received from the Department of Planning and Development are completed and submitted in duplicate with two copies of the plan, showing any recommended changes in red, and two copies of the Municipality's recommended conditions of approval).

After consideration by the Metropolitan Toronto Planning Board and the Department of Planning and Development, the plan may be given "Draft Approval" subject to certain conditions. At this stage the subdivider will be advised by the Department of Planning and Development of the status of his plan and if draft approved, the conditions under which the Minister is prepared to grant approval.

When "Draft Approval" has been given by the Minister of Planning and Development the Subdivider prepares a schedule showing the sizes of all lots within the boundaries of the proposed plan. This, in duplicate, together with two copies of the final plan prepared for registration is submitted to the Planning Board.

As soon as the Township is notified that "Draft Approval" has been given by the Minister, the owner is advised by the Deputy Clerk:

- (a) To have his Engineer contact the Township Engineer to discuss the Engineering Agreement into which the Subdivider must enter.
- (b) To contact the Township Treasurer to discuss financial matters appertaining to the Subdivision.

When he is satisfied with the financial arrangements made, the Township Treasurer so informs the Deputy Clerk, sending a copy of his letter and a copy of the proposed financial agreement to the Township Engineer and the Secretary of the Planning Board. The Township Engineer meanwhile advises the Subdivider's Engineer what the Township's detailed requirements are within the subdivision and requests him to prepare two copies of an Engineering Agreement complete with drawings, schedules, etc. One of these copies is submitted to the Township Engineer, and one copy to the Public Utilities Commission for their preliminary perusal and checking. The owner's engineer then amends the documents where necessary, and submits four copies of the plans so amended, two to the Township Engineer and two to the Public Utilities Commission. In addition, duplicate copies of the developer's application to the Ontario Water Resources Commission for watermain and sanitary sewer scheme approvals are submitted. One copy of the amended plans is then forwarded to the Ontario Water Resources Commission by the Public Utilities Commission for approval, the other retained by the Commission for the preparation of their final comments. The Public Utilities Commission forwards their final comments to the owner with copies to the Township Engineer and the Deputy Clerk.

One copy of the documents as submitted to the Township Engineer is forwarded to the Ontario Water Resources Commission for their approval of the sewer works. The other is checked by the Township Engineer and his final comments with respect to the submission are prepared. This copy of the document, together with the Engineer's final comments, is then forwarded to the Township Development Department and the Township Planning Director, who returns the documents to the Township Engineer, together with their written comments, copies of which are sent to the Deputy Clerk.

When the Township Engineer and other departments are satisfied that the Engineering Agreement is in order, the Township Engineer requests the Subdivider's Engineer to prepare and submit 7 copies of the agreement and 3 copies of the final plan for registration to the Township Engineer for final checking. When checking is complete, all 7 copies are forwarded to the Deputy Clerk who arranges to have them signed by The Council. Two copies of the executed agreement are returned to the owner for his use and the other five copies retained by the Township and the Public Utilities Commission.

When the financial and engineering agreements have been signed, all deeds received and all conditions as required by the Minister of Planning and Development, met, the Deputy Clerk so informs the Planning Board, attaching a copy of the signed final plan for registration - which must coincide with the plan forming part of the engineering agreement.

The Planning Board then notifies the Minister that the Plan is in order and attaches a copy of the signed final plan to its letter.

If any difficulty arises during the "Processing" of a plan that can not be resolved by the subdivider or his agents and the Township Officials, the difficulty is referred to the Development Committee of Council by the head of the Department where such conflict or difficulty occurs, via the Deputy Clerk.

It may seem to some that the procedure followed in the "Processing" of a proposed plan is complicated. The process has evolved gradually over the years, but it is annually revised to bring it "up to date." It is not intended to cause the maximum inconvenience to the developer, but is intended to safeguard the Municipality and those who will live in the development. It is not any more restrictive than is considered absolutely necessary.

The Planning Board staff and the staff of other Township Departments are available to help developers, large or small, in any way possible. Although the number of enquiries received by the Planning Board staff in 1958 was substantially greater than in 1957, it is hoped that 1959 will see more help extended by the staff in this respect.

Residential Subdivisions registered in 1958	-	8	No. of Lots	-	456	<i>what's</i>
Industrial " " " "	-	1		-	44	<i>what's</i>
Residential Subdivisions released in 1958	-			-	1337	
Residential Subdivisions released by special agreement in 1958	-			-	225	

SUBDIVISIONS 1958.



- 1. ▲ SUBDIVISIONS ON SPECIAL AGREEMENT.
- 8. ● RESIDENTIAL SUBDIVISIONS REGD. IN 1958.
- 1. ○ INDUSTRIAL " " " "
- 27. ■ PROPOSED RESIDENTIAL SUBDIVISIONS RELEASED 1958.

DIVISIONS OF LAND (pursuant to Section 24 of The Planning Act, 1955)

1958 saw the readoption by the Board and Council of the policy set up in the previous year for divisions of land, viz:

"The Board, on considering applications for the consent of the Board under Clause C of Subsection 3 of Section 24 of The Planning Act, 1955, to any conveyance or agreement respecting lands should decline to give such consent where:

- (a) The applicant was not the registered owner of the land on January 1st, 1958;
- (b) The Board has given similar consent since December 31st, 1957, to a conveyance or agreement respecting land of the applicant;
- (c) The land is not provided with all municipal services deemed by the Board to be necessary in the circumstances; or
- (d) The Board deems the proposed division of the land likely to prejudice the desirable future land use pattern of the area."

Divisions of land in Commercial and Industrial areas were considered on the same general basis but with no limitations as to the number of consents given during the year.

The number of applications received during the year showed a slight increase over previous years, approximately equal in proportion to the increase in population during the year. As in previous years the majority of divisions were in the area south of the Burnhamthorpe Road and were for residential purposes. It was possible in 1958 to help a number of intending 'dividers' split their land in a manner more advantageous, both to them and the community, than they had originally proposed. It is hoped that this 'service' can be continued in future years, and that community studies can be completed in all areas where divisions of land take place in any number.

Residential approved	131
Residential refused	15
Commercial approved	21
Industrial approved	31
Others	<u>55</u>
TOTAL	253
Residential building lots created	109

DIVISIONS OF LAND.

SECTION 24 OF THE
PLANNING ACT 1955



- RESIDENTIAL APPROVED
- RESIDENTIAL REFUSED.
- COMMERCIAL APPROVED.
- ◐ INDUSTRIAL APPROVED.
- ▲ OTHERS.

SPECIAL PROJECTS

During 1958 many interesting and useful special projects were undertaken or continued to a conclusion. Possibly the most notable special projects were the following:

- (a) Industrial Study of Toronto Township ready for presentation (SP #39) by late fall, 1958.
- (b) Conservation Study - Credit River and Etobicoke Creek - which will be completed early in 1959 (contained in SP #32).
- (c) The SE and SW Sewer Area Studies which provided Council with a guide towards the proper and economic development of these areas and also assisted materially in the formulation of a 1958 Subdivision Policy. (SP #49, SP #50).

The following is a list of the Special Project files opened in 1958, together with a brief description of the scope of each project.

SP #46 - Revision of the Zoning By-Law

This Study was continued throughout 1958, and eight sections of the By-Law were rewritten during this time. Of these, four have been sent to the Zoning Administrator for his perusal, and, of these, one section (Automobile Commercial) has now been finalized for presentation to Council.

SP #49 - South Eastern Sewer Area Study

This Study was undertaken at the request of Council to determine the likely future population of the South Eastern Sewer Area, if developed at various densities. The potential future development of industrial and commercial land was also considered. Comments and information supplied by the Township Engineer and the Assessment Commissioner were incorporated into the Study, which was used as a guide in formulating the 1958 Subdivision Policy.

SP #50 - South Western Sewer Area Study

This Study was similar in scope to SP #49 except, of course, dealing with a different area.

SP #53 - #10 Highway Report - Non-conforming Uses

A detailed Study of the non-conforming uses (legal and otherwise) in the vicinity of #10 Highway and Paisley Blvd., including several properties south of the Hydro Power lines. Recommendations for the future land use of specific properties were made, and a chart showing the possible permissible uses on Highway #10 and the zones under which each could be classified was also included.

SP #53B - #10 Highway Report (Cookeville to Queen Elizabeth Highway)

A general land use study between Cookeville Creek and Izard's Creek to determine the best and most economic use of the land on either side of #10 Highway (Centre Road), together with suggested broad rezoning proposals.

SP #53C - #10 Highway Report (Queen Elizabeth to Port Credit)

A somewhat more detailed report than 53B dealing with land use, shopping habits, traffic statistics, residential densities, and the resultant problems in the area between the Credit River and Cawthra Road.

SP #54 - Sanitary Land Fill

This file contains information which has been collected on this subject, also various reports upon the advantages of sanitary land fill, and recommendations for establishing sites in the township which were presented to Council. Progress reports on specific sites are also contained in this file.

SP #55 - Municipal Offices and Civic Centre

A file containing all the material regarding the proposed Municipal Offices and Civic Centre.

SP #56 - Rezoning of lands - Toronto/Trafalgar Town Line

Preliminary data collected with respect to the above mentioned lands. As yet no firm proposals have been formulated.

SP #57 - Still Meadow Road/ Upper Middle Road Development Study

A proposed road pattern, school site, recreation area and stream improvement for this large section of land south-west of Cooksville.

SP #58 - Etobicoke Creek Park Land Study

Extensive co-operative work has been done by both the Township of Toronto and Etobicoke in attempting to establish a joint park of 15.5 acres on the Etobicoke Creek. It is expected to contain such facilities as picnic tables, playgrounds, sports fields and courts, parking space and one or two foot bridges connecting the two sides of the river.

SP #59 - #10 Highway Service Station Study

An investigation of the service station situation on #10 Highway, north from #5 Highway to the Town Line, to determine whether more or fewer stations were necessary. A recommendation to limit the number of stations (subject to review) was approved by Council as a policy for the Highway. This report marked the first attempt by the Township to limit or regulate the number of service stations according to definite basic standards. It is hoped to prepare further studies of the same nature in connection with a revised Official Plan.

SP #60 - Off-Street Parking

Data which was collected from a recent conference in Toronto on this subject.

SP #61 - Dixie Road/Queen Elizabeth Interchange

A collection of data concerning solutions to the traffic problems at this intersection put forward by the Department of Highways, the Metropolitan Planning Board and the Township.

SP #62 - Municipal Reorganization

A collection of material dealing with possible future municipal reorganization in Ontario.

SP #63 - Regional Planning

Information collected from conferences and discussions concerning Regional Planning in general, and more particularly, Ontario.

SP #64 - Revised Official Plan

A file concerned with the collection of material and ideas which could be used in the formulation of a revised Official Plan.

SP #65 - Community Study - 5th Line, North of the Queen Elizabeth Highway

Preliminary work on a community study west of the 5th Line West and north of the Queen Elizabeth Highway, with special consideration given to the problem of the gravel pits in the area.

SP #66 - Divisions of Land Policy

This file was opened to collect information on divisions of land not made by registered plans.

SP #67 - Residential Density Studies

This data for existing development was and is being calculated and collected, and can be used in the preparation of the proposed new Official Plan.

COMMITTEE OF ADJUSTMENT

The Committee of Adjustment enjoyed a busy year with an increase in the number of applications of approximately 30% over 1957.

Many of the applications received during 1958 concerned lots on new plans of subdivision where either the houses were too large for the lots, the lots too small for the houses or the regulations contained in the by-law governing such lots in some way wrong. Such applications provide the Municipality with useful information since problems found by the committee to recur frequently usually need study by the Planning Board. There were a number of interesting cases requiring a considerable amount of work by the Committee's staff, and in some cases the Planning Board staff. Few cases excited the public in the way that some in 1956 did, although one case which was under negotiation for several months was eventually appealed by interested neighbours after a conditional approval had been given by the Committee.

In 1957 the Committee started the practice of having photographic evidence submitted on each case. This was continued in 1958 and seems to have been most helpful to both the Committee and applicants.

Several municipalities starting up Committees of Adjustment asked for information about the Township of Toronto body in 1958 and in 1959 four Committees are expected to attend a meeting in Cooksville to observe the practice here. The interest shown by other parts of the province indicates perhaps that the trust placed by the municipality in the Committee was not unjustified.

During 1958 the Committee continued to receive frequent applications for the enlargement or extension of non-conforming uses, or the conversion of such uses to similar uses or to uses that are more compatible with the uses permitted in the by-law. Not only are these applications frequent, they are also about the most difficult to decide.

There is no basic philosophy underlying the non-conforming use that could act as a guide for the Committee. The expression "non-conforming use" is technical jargon. It refers to a lawful use of land or buildings on the day a zoning by-law is passed that is prohibited by the by-law. No zoning by-law can be applied so as to prevent that use so long as it is continued without change or interruption. If it is continued uninterrupted until the day the owner applies to the Committee, the Committee has jurisdiction. Some hypothetical examples based on cases in the Committee's files will illustrate some of the difficulties of deciding whether there is jurisdiction.

A concrete block building was used as a garage for a fleet of trucks on the day By-Law 1614 was passed limiting the buildings in the zone to residential uses. The truck operator did his repair and maintenance work at this place but otherwise the use was largely storage. After two years the truck operator moved out and the building was vacant for a month, when it was taken over for use as a public garage where "repairs to all makes" were carried out. Then the Committee was asked to permit a new wing to be added for a showroom for the sale of cars. The Committee had to decide whether the one month's vacancy meant that the use had not "continued" up to the day of the application, and whether the use as a garage and the proposed showroom was the same as the use on the day the by-law was passed. If the use was not continuous and the same the Committee could only proceed under another head of jurisdiction, which allows the Committee to authorize a minor variance from the terms of the by-law. Most authorities argue that to permit an industrial or commercial use in a residential zone is not a "minor" variance.

In another case, the applicant operated a fruit stand in a residential zone on the day the by-law was passed. This was clearly "non-conforming" and it had clearly "continued" until the day the applicant asked for an addition twenty feet deep to be constructed in the rear of the existing building. The application was approved but the applicant did not get on with the addition before the by-law was amended to permit the fruit stand as a "food store" in the language of the by-law. In one sense the fruit stand was no longer a use prohibited by the by-law and so the Committee could only authorize a "minor" variance in respect of it. But under the new by-law, any building used as a food store had to be set back seventy-five feet from the street line. Since the fruit stand was set back only thirty feet, and was only twenty feet deep, the proposed addition would be entirely within the seventy-five feet the by-law required to be kept as open space for parking. It was very doubtful whether the authorization of the addition could be regarded as a "minor" variance. The Committee, however, was asked to take the position that the original building, because it was wholly within the seventy-five feet the by-law required to be kept as open space, was properly to be regarded as in a prohibited use.

The second case differs from the first in that the first is a clear case of a use of land that is prohibited by the by-law, the only question being the one of continuity and similarity or sameness. The second case is one of a permitted use but one where the regulation of the use was violated. This seems to be a rather artificial distinction, yet one which many authorities think should be drawn.

Simpler illustrations of the second case frequently come before the Committee. As an example: the applicant owned a lot that had an area of 3,000 square feet. The minimum area permitted under By-Laws 1760 and 2019 was 4,000 square feet. On his lot the applicant had a house, erected in 1945 with a floor area of 700 square feet, set back fifteen feet from the street line, with a side yard of only one foot. By-Law 1614 requires a minimum area of 720 square feet, a front yard of twenty-five feet and a side yard of four feet. The zone was residential and in one sense the building, as a residential building,

was not being used for a purpose prohibited by the by-law. But if the building could not be regarded as non-conforming, the Committee only had jurisdiction to permit the applicant to add a room ten feet by twenty feet, at the rear, if all these deviations from the by-law regulations could be regarded as "minor." Not everyone would regard a variance in area from 4,000 to 3,000 square feet as "minor." In another sense the building could be regarded as being used for a purpose prohibited by the by-law because the by-law prohibits houses in the front yards or side yards as defined.

If the Committee can properly regard the application as one arising from a non-conforming use, it is not limited to authorizing a "minor variance." There are only two limitations placed upon the Committee's discretion to approve the application.

The Committee can only permit the enlargement or extension of a building or structure within the limits of the land owned and used in connection therewith on the day the by-law was passed. If the enlargement or extension is to extend on to land acquired after the by-law was passed, the Committee has no jurisdiction to deal with the application.

The second limitation is that the Committee may only permit the enlargement or extension of an existing building or structure. It cannot, apparently, permit any detached building. Thus if an applicant owns a residential lot in an industrial zone in which houses are prohibited, and he applies to the Committee for permission to erect a garage on the spot where he has been parking his car beside his house for years past, the Committee could permit the garage if it were attached to the house directly or by a "breezeway," because it could be called an extension of the existing building. But if the garage is to be separate and detached from the house, although on the same foundation, many authorities, including the Minister of Planning and Development and the Ontario Municipal Board, have expressed the view that the separate building cannot be permitted. In this particular illustration there would seem to be no reason why the Committee could not authorize the "breezeway attached" garage and the applicant could not later remove the breezeway.

The Committee is authorized to permit a similar use of the land, building or structure, or a use more compatible with those permitted in the by-law. It might be thought that the erection of a garage on land where a car has been parked for some years is a similar use of land, but the "official" view seems to be that parking is a use of land, not the use of a building, and the Committee is only authorized to permit a similar use of land, it is not expressly authorized to permit the erection of a building, even for a similar use. The distinction between the use of land and the erection of a building is consistently maintained throughout section 390 of The Municipal Act and The Planning Act, 1955.

The Committee's attention has been brought to some cases where other Committees have assumed jurisdiction to permit detached building and the Minister of Planning and Development has not appealed the decision to the Municipal Board.

This ambiguous position leaves all the parties in doubt about the status of the building permitted by the Committee. If the view taken by the Minister and the Municipal Board on former appeals is correct, then the Committee's permission is so much scrap paper and the building stands in violation of the law. If the view is correct that the Committee has jurisdiction to permit separately detached buildings, then many Committees, including this one, have unwittingly administered gross injustice to applicants who, for one reason or another, have not appealed to the Municipal Board when the Committee refused their application. The Committee cannot regard this as a satisfactory state of the law, and it believes that the Minister of Planning and Development should introduce an amendment to The Planning Act, 1955, to clarify the jurisdiction.

Even when the Committee properly decides that it has jurisdiction, it is still faced with the equally difficult question whether it ought to exercise that jurisdiction in favour of the applicant. It is one thing to be able to help the applicant. It is quite another to consider it desirable to help him. Because the Committee is not, in these cases, limited to a "minor" variance, the enlargements or extensions applied for are sometimes very substantial. Unfortunately neither The Planning Act, 1955, The Municipal Act nor the Zoning By-Law offers the slightest indication of a general policy to guide the Committee. So far as the legislation is concerned the Committee could not be blamed if it took the position that once it had jurisdiction it ought to "go the limit." This Committee has never taken that position. It has always considered that it should investigate each case thoroughly in the light of the three factors described in the 1957 Report of the Committee. It believes that there is some sensible proportion or balance of interests that can be appreciated after thorough study.

THE COMMITTEE'S USE OF CONDITIONS

Quite often the Committee has found that the worst effects of a non-conforming use may be minimised, even when the use is enlarged or extended, by imposing restrictive conditions on the future use. Some further hypothetical examples based on actual cases will illustrate the possibility.

In one case a non-conforming user wanted to extend his building closer to the side lot line. This meant that the undesirable aspects of the prohibited use, from which his neighbour was entitled to expect protection within the limits of the by-law, would be aggravated. The Committee insisted that the applicant erect a chain link fence around his property, and plant a cedar hedge along this lot line. The end result was that the neighbour was better protected after the extension than he was before.

In another case a service station operator (in non-conforming use) kept his station in a rather untidy state. When he applied for permission to move his tanks to another place on the lot, and rent additional space from the adjoining lot owner

to extend his driveway, his neighbours appeared in a body to protest. When it was explained to the neighbours that the Committee might attach a condition to its approval that the operator clean up his premises, construct a neat fence around his actual service area, plant cedars to block the view from the surrounding residences, and refrain from depositing or burning garbage behind his building in full view of the residences, these angry and protesting neighbours were quite disappointed that the Committee had to refuse the application because it had no jurisdiction to permit the applicant to extend his operation onto land he had not owned on the day the by-law was passed.

These same neighbours got the idea readily enough, that by the imposition of suitable conditions, a bad situation could be radically improved if the price of extension was paid. In another case on nearby land the applicant wanted permission to remove a large amount of soil from his property. The operation was opposed by the neighbours who were afraid that the applicant was starting a gravel pit. In the depths of its ignorance the Committee supposed that a gravel pit was a use of land lawfully prohibited by By-Law 1614 in residential zones, but that soil could be removed in order to grade the land suitably for residential development. After consulting the Township Engineer about grade levels and drainage, the Committee authorized the soil removal as a preliminary stage in residential development. (Since the Committee heard this case the Ontario Court of Appeal has expressed its view that the operation of a gravel pit is not a use of land that can be prohibited by a by-law passed under section 390 of The Municipal Act.) The neighbours asked that conditions be imposed. In particular they wanted the Committee to require the applicant to demolish some dilapidated shacks on his property. As it happened, the applicant agreed to do this, but the Committee would have been hard pressed to have justified requiring their removal. The unsightly shacks were in no way connected with the subject matter of the application and it is doubtful whether the Committee should use its powers to carry on a gentle sort of blackmail. If the concession asked for by the applicant is accompanied by or aggravates conditions that the by-law seeks to avoid, the Committee may impose any conditions that can reduce the aggravation.

The possibilities of appropriate control by Committee conditions have not been widely explored in Ontario and the proposed visit here of four other Committees, mentioned earlier in this report, may be the occasion for some valuable discussion and comparison of experience. The Committee has frequently regretted that lack of information about the development of adjustment policy by other Committees and the hope has been expressed to the Minister of Planning and Development, and to several other Committees, that machinery may be devised for sharing views.

Applications received by the Committee in 1958		181
Approved	160	
Refused	14	
Not proceeded with	2	
Withdrawn	1	
Deferred	<u>4</u>	
TOTAL	181	181
Appeals	5	

* * * * *

COMMITTEE OF ADJUSTMENT.

APPLICATIONS UNDER SECTION 16.

PLANNING ACT 1955.



- APPROVED.
- + REFUSED.
- NOT PROCEEDED WITH.
- ▼ WITHDRAWN.
- DEFERRED

